

## **What Makes Convening and Managing Public Sector Dispute Resolution Unique?**

Public sector dispute resolution frequently occurs in a public setting, subject to direct and indirect participation and pressure from a wide variety of groups, interests, and political processes in a way that adds a whole new dimension to the dispute resolution process and can make achieving durable results doubly difficult.

To successfully manage and resolve public sector disputes, ADR professionals must be able to:

### **Analyze and assess**

- Assist the parties with identifying their interests and issues
- Determine whether parties, including participating agencies, are willing to publicly discuss their issues and policies
- Discover who needs to participate in the negotiation
- Recognize how relationships among stakeholders and issues may affect the negotiation
- Investigate the incentives and disincentives for settlement and whether having discussions will have a good chance of succeeding, or minimally will do no harm
- Assist the parties in assessing what resources are immediately available or may need to be acquired, including personal commitment, financial, time and information resources
- Explain the rationale behind a dispute resolution process and associated activities to stakeholders, political and community leaders, agency heads and staff, and determine whether their support for purposeful engagement may be forthcoming
- Make sure that participants and the public have access to necessary information important to make decisions
- Determine whether the issue is appropriate for mediation

### **Design a negotiation process**

- What's the appropriate format and structure for the negotiation? (workshops, task groups, separate rooms, face-to-face negotiations, conference calls)
- What roles are needed and who will play them?
- Assure that representatives present either have settlement authority or that the means for bringing about settlement approval are clearly known by all sides
- Will more than one mediator or group facilitator be needed?

- In what order will issues be addressed and alternatives developed?
- When necessary, how will confidentiality be maintained?
- Establish with the parties a realistic time frame for a given agenda, and for the mediation as a whole
- Answer how scheduling of the negotiation may be affected by the regularly scheduled spring and fall election and fall budget cycles?
- Is a written single-text document necessary or desirable?
- Determine how implementation of any agreement will be accomplished and monitored?

### **Manage the process**

- Determine how Wisconsin's open meeting law requirements will be satisfied if elected council and board members are present
- Identify who needs to be present in order to make any given session worthwhile and relevant for the parties
- Work with the parties prior to meetings to prepare agendas and make homework assignments
- Organize the arrangement of the room, and assure that space is available in which parties may have private conversations
- Explain what a caucus is and the circumstances that may warrant its use
- During the negotiation process, help parties decide how communications with outside groups, such as the press, should be handled
- Help parties identify how internal process issues are handled, such as communications between the parties, confidentiality, and joint management of financial resources
- With the parties, facilitate the preparation of guidelines addressing behavior, procedure, confidentiality, party representation, absences, what constitutes consensus, and whatever other issues the mediator and parties may need to address
- Encourage full participation from all parties, especially from those less vocal
- Monitor the discussion and assist the parties with framing and reframing issues
- Anticipate what may need to be included in a written settlement agreement and get these questions on the table before the parties become emotionally wrung out and less likely to tolerate a last-minute condition of approval
- Manage strong emotions and anticipate and manage potential conflict while maintaining the ability of parties to communicate with one another
- If necessary, terminate the mediation for reasons of non-cooperation or bad faith

- If asked, be prepared to alter course and help the parties negotiate a graceful exit
- Successful mediations are not necessarily measured by whether an agreement was obtained or not, but by how the parties approach and define the next problem, as well as how they choose to behave toward one another when another dispute occurs

Accomplishing these many activities, many of which occur simultaneously, may seem to present a daunting challenge, but their successful resolution is frequently aided by counsel representing the various parties, as well as by the personal commitment and integrity of the local elected officials and agency staff who may be directly involved in the discussions.